

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEXANDRE PETROV,	:
	:
Plaintiff,	: Civil Action No. 07 Civ. 4060 (DLC)
	:
-against-	:
	: DEFENDANTS' NOTICE OF MOTION
BROWN HARRIS STEVENS	: TO DISMISS PLAINTIFF'S
MANAGEMENT, LLC and	: COMPLAINT IN ITS ENTIRETY
920 FIFTH AVENUE CORPORATION,	:
	:
Defendants.	:
	:
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PLEASE TAKE NOTICE, that pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, Defendants Brown Harris Stevens Management, LLC and 920 Fifth Avenue Corporation (collectively, "Defendants"), will move this Court at the Daniel Patrick Moynihan United States Courthouse, located at 500 Pearl Street, New York, New York 10007 before the Honorable Denise L. Cote on a date and time to be designated by the Court for an Order (1) dismissing Plaintiff's Verified Complaint ("Complaint") in its entirety and awarding Defendants attorneys fees and such other and further relief that the Court deems just and proper.

This Court should dismiss: (1) Plaintiff's First and Second Claims for failure to pay overtime under the Fair Labor Standards Act ("FLSA") (29 U.S.C. § 201, *et seq.*) and the New York Labor Law (N.Y. LAB. LAW § 190, *et seq.*) (a) for failure to state a claim upon which relief may be granted and, alternatively, (b) to the extent plaintiff is seeking relief under the FLSA for conduct which occurred prior to May 24, 2004, such claims are time-barred by the applicable statute of limitations; and (2) all of plaintiff's claims, including his Third Claim for Relief ("Meal Allowance"), Fourth Claim for Relief (Breach of Contract) and Fifth Claim for Relief (Unjust Enrichment) in as much as they are preempted by Section 301 of the LMRA;

plaintiff lacks standing to bring such claims; such claims are subject to the grievance and arbitration procedures set forth in the applicable collective bargaining agreement ("CBA") and there is no private right of action under New York Labor Law § 162; and (3) awarding Defendants such other and further relief that the Court deems just and proper, including but not limited to, reasonable attorneys' fees and costs.

A Memorandum of Law in support of this motion is submitted herewith.

A true and accurate copy of the Summons and Complaint is attached hereto as Exhibit A. A true and accurate copy of the copy of the relevant collective bargaining agreements effective April 21, 2000 to April 20, 2003; effective April 21, 2003 to April 20, 2006; and effective April 21, 2006 to April 20, 2010, are attached hereto as Exhibits B, C and D, respectively.

Dated: New York, New York
July 10, 2007

Respectfully submitted,

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